RECORD AND BRIEFS

No. 14-15

FILED
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OFFICE OF THE CLERK

In The
Supreme Court of the United States

RICHARD ARMSTRONG and LISA HETTINGER,

Petitioners,

v.

EXCEPTIONAL CHILD CENTER, INC.; INCLUSION, INC.; TOMORROW'S HOPE SATELLITE SERVICES, INC.; WDB, INC.; LIVING INDEPENDENTLY FOR EVERYONE, INC.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed July 2, 2014
Certiorari Granted October 2, 2014

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The following opinions and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

District Court Memorandum Decision and Order dated December 12, 2011 ..... App. 15

District Court Memorandum Decision and Order dated April 12, 2012 ..... App. 7

District Court Judgment dated April 12, 2012 .... App. 5

Ninth Circuit Court of Appeals Memorandum filed April 4, 2014 ..... App. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

INCLUSION, INC., EXCEPTIONAL CHILD CENTER, INC., LIVING INDEPENDENTLY FOR EVERYONE, INC., TOMORROW'S HOPE SATELLITE SERVICES, INC., WDB, INC.,	)	Case No. 09-CV-00634-BLW
Plaintiffs,	)	Relevant Docket Entries
v.	)	
RICHARD ARMSTRONG, and LESLIE CLEMENT, in their official capacities,	)	
Defendants.	)	

Date Filed	No.	Docket Text
12/07/2009	1	COMPLAINT against Richard Armstrong, Leslie Clement (Filing fee $ 350 receipt number 0976-546767.), filed by Tomorrow's Hope Satellite Services, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Exceptional Child Center, Inc., WDB, Inc.. (Attachments: # 1 Summons Leslie Clement, # 2 Summons Richard Armstrong) (Piotrowski, James) (Main Document 1 replaced on 12/8/2009) (dks).
12/07/2009	2	Civil Cover Sheet re 1 Complaint, filed by Inclusion, Inc., Exceptional Child Center, Inc., WDB, Inc., Living

Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc.. (Piotrowski, James) (Main Document 2 replaced on 12/8/2009) (dks).

12/08/2009 3 Summons Issued as to Richard Armstrong, Leslie Clement. (Print attached Summons for service.) (Attachments: # 1 Summons issued) (dks)

01/11/2010 4 NOTICE of Appearance by Margaret Peg M Dougherty on behalf of Richard Armstrong, Leslie Clement (Dougherty, Margaret)

01/19/2010 8 DEFENDANTS' ANSWER to 1 Complaint, by Richard Armstrong, Leslie Clement. (Dougherty, Margaret)

02/05/2010 9 Corporate Disclosure Statement by Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. (Durand, Marty)

02/11/2010 10 SCHEDULING CONFERENCE FORM – LITIGATION PLAN by Richard Armstrong, Leslie Clement, Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. (Piotrowski, James)

02/11/2010 11 CASE MANAGEMENT ORDER ADR Plan to be filed by 5/11/2010. Amended Pleadings due by 5/11/2010. Discovery due by 9/3/2010. Joinder of Parties due

by 5/11/2010. Motions due by 10/15/2010.. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)

05/25/2010 14 DOCKET ENTRY ORDER – Pending before the Court is the stipulated ADR Plan 13 of the parties filed May 13, 2010. The Court having considered the pleadings shall approve the Plan. IT IS HEREBY ORDERED THAT the parties have agreed to a Settlement Conference to be conducted by the Honorable Candy Wagahoff Dale, Chief Magistrate Judge, United States District Court, for the District of Idaho. IT IS HEREBY ORDERED THAT this matter is referred to Judge Dale for the purposes of conducting a Settlement Conference. Local Rule 16.4. Plaintiff shall contact Amy Hickox, Judge Dales In-Court Deputy at (208) 334-9387 on or before June 4, 2010 to schedule a Settlement Conference, which shall be conducted no later than September 30, 2010. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by sbh)

09/16/2010 15 Joint MOTION for Extension of Time to Complete Discovery Margaret Peg M Dougherty appearing for

Defendants Richard Armstrong, Leslie Clement. Responses due by 10/12/2010 (Dougherty, Margaret)

09/17/2010 16 DOCKET ENTRY ORDER – Before the Court is the Parties' Joint Motion 15 for Extension of Time to Complete Discovery. There being no opposition, and for good cause showing, the Motion 15 is hereby GRANTED. The deadline for completion of discovery shall be extended 45 days to October 18, 2010. Signed by Judge B. Lynn Winmill. (dh)

06/30/2011 27 DOCKET ENTRY ORDER – The parties have notified the Court that they believe this case can be resolved on stipulated facts, in lieu of a bench trial. THEREFORE, IT IS HEREBY ORDERED THAT the parties are to make a determination by July 21, 2011 whether they can reach a stipulation as to the relevant facts. If they are able to do so, they shall file a stipulation on that date; and submit motions for summary judgment on stipulated facts within four weeks, with responses due four weeks thereafter. If they are unable to reach stipulation on the relevant facts, they shall inform the Court July 21, 2011, and the Court will then schedule a bench trial. Signed by Judge B. Lynn Winmill. (sbh)

07/25/2011 28 STIPULATION *of Facts* by Richard Armstrong, Leslie Clement. (Dougherty, Margaret)

08/18/2011 29 MOTION for Summary Judgment James Marshall Piotrowski appearing for Plaintiffs Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. Responses due by 9/12/2011 (Attachments: # 1 Memorandum in Support) (Piotrowski, James)

08/18/2011 30 MOTION for Summary Judgment Margaret Peg M Dougherty appearing for Defendants Richard Armstrong, Leslie Clement. Responses due by 9/12/2011 (Attachments: # 1 Memorandum in Support) (Dougherty, Margaret)

09/15/2011 32 MEMORANDUM in Opposition re 29 MOTION for Summary Judgment filed by Richard Armstrong, Leslie Clement. Replies due by 10/3/2011.(Newell, Charina)

09/15/2011 33 MEMORANDUM in Opposition re 30 MOTION for Summary Judgment filed by Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. Replies due by 10/3/2011.(Piotrowski, James)

10/03/2011 34 REPLY to Response to Motion re 29 MOTION for Summary Judgment filed by Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. (Piotrowski, James)

10/03/2011 35 REPLY to Response to Motion re 30 MOTION for Summary Judgment filed by Richard Armstrong, Leslie Clement. (Dougherty, Margaret)

10/31/2011 36 Minute Entry for proceedings held before Judge B. Lynn Winmill: Motion Hearing held on 10/31/2011 re 29 Motion for Summary Judgment and 30 Motion for Summary Judgment. Matter taken under advisement. Supplemental briefing shall be limited to 5 pages and is due by 5:00 p.m. on 11/2/2011. (Court Reporter Tammy Hohenleitner.) (jlg)

11/02/2011 37 SUPPLEMENT by Plaintiffs Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc. re 29 MOTION for Summary Judgment. (Piotrowski, James)

11/02/2011 38 SUPPLEMENT by Defendants Richard Armstrong, Leslie Clement re 30 MOTION for Summary Judgment *Supplemental Brief*. (Dougherty, Margaret)

12/12/2011 39 MEMORANDUM DECISION AND ORDER granting 29 Motion for Summary Judgment; denying 30 Motion for Summary Judgment. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)

01/12/2012 40 MOTION for Reconsideration re 39 Order on Motion for Summary Judgment, Order on Motion for Summary Judgment, Order on Motion for Summary Judgment, Order on Motion for Summary Judgment Margaret Peg M Dougherty appearing for Defendants Richard Armstrong, Leslie Clement. Responses due by 2/6/2012 (Attachments: # 1 Memorandum in Support of Motion for Reconsideration, # 2 Affidavit, # 3 Affidavit, # 4 Exhibit Exhibit A to Pugatch Dec, # 5 Affidavit, # 6 Exhibit Exhibit A to Ballard Dec) (Dougherty, Margaret)

01/13/2012 41 NOTICE of Substitution – Attorney Carl J Withroe for Richard Armstrong,Carl J Withroe for Leslie Clement added. Attorney Charina A Newell terminated. (Withroe, Carl)

01/24/2012 42 RESPONSE to Motion re 40 MOTION for Reconsideration re 39 Order on Motion for Summary Judgment, Order on Motion for Summary Judgment, Order on Motion for Summary Judgment, Order on Motion for Summary

Judgment filed by Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. Replies due by 2/10/2012. (Attachments: # 1 Affidavit Declaration of Janna Miller)(Piotrowski, James)

01/24/2012 43 MOTION for Entry of Judgment James Marshall Piotrowski appearing for Plaintiffs Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. Responses due by 2/17/2012 (Attachments: # 1 Memorandum in Support) (Piotrowski, James)

01/24/2012 44 MOTION to Expedite *Consideration of Motion for Entry of Judgment and Motion for Reconsideration* James Marshall Piotrowski appearing for Plaintiffs Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. Responses due by 2/17/2012 (Attachments: # 1 Memorandum in Support) (Piotrowski, James)

02/10/2012 45 REPLY to Response to Motion re 40 MOTION for Reconsideration re 39 Order on Motion for Summary Judgment, Order on Motion for Summary

Judgment, Order on Motion for Summary Judgment, Order on Motion for Summary Judgment filed by Richard Armstrong, Leslie Clement.(Withroe, Carl)

02/17/2012 46 RESPONSE to Motion re 43 MOTION for Entry of Judgment, 44 MOTION to Expedite *Consideration of Motion for Entry of Judgment and Motion for Reconsideration* filed by Richard Armstrong, Leslie Clement. Replies due by 3/5/2012.(Withroe, Carl)

02/23/2012 47 NOTICE by Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc. *Plaintiffs' Notice of Supplemental Authority* (Piotrowski, James)

03/06/2012 48 REPLY to Response to Motion re 44 MOTION to Expedite *Consideration of Motion for Entry of Judgment and Motion for Reconsideration* filed by Exceptional Child Center, Inc., Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc.. (Piotrowski, James)

04/12/2012 49 MEMORANDUM DECISION AND ORDER denying 40 Motion for Reconsideration; granting 43 Motion for Entry of Judgment; denying as moot 44 Motion to Expedite. Signed by Judge B. Lynn Winmill. (caused to be

mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (krb)

04/12/2012 50 JUDGMENT. Judgment is entered for Plaintiffs. The relative rights and obligations of the parties are as set out in that Memorandum Decision and Order 39. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (krb)

05/11/2012 51 NOTICE OF APPEAL as to 50 Judgment, 49 Order on Motion for Reconsideration, Order on Motion for Entry of Judgment, Order on Motion to Expedite,,, 39 Order on Motion for Summary Judgment,,, by Richard Armstrong, Leslie Clement. (Notice sent to Court Reporter & 9th Cir) (Attachments: # 1 Representation Statement) (Withroe, Carl) (12-35382)

05/14/2012 52 USCA Case Number 12-35382 for 51 Notice of Appeal, filed by Richard Armstrong, Leslie Clement. (cjm)

05/14/2012 53 USCA Scheduling Order as to 51 Notice of Appeal, filed by Richard Armstrong, Leslie Clement. (Notice sent by e-mail to Court Reporter) (cjm)

05/18/2012 RECEIPT: Appeal Filing Fee Fee Received $ 455.00, receipt # 7038 for 51 Notice of Appeal (cjm)

06/08/2012 54 TRANSCRIPT REQUEST by Richard Armstrong, Leslie Clement for proceedings held on 10/31/2011 before Judge Winmill, (Notice sent by e-mail to Court Reporter) (Withroe, Carl)

07/02/2012 55 Transcript filed for dates of 10/31/2011 (Motion Hearing) before Judge B. Lynn Winmill, re 51 Notice of Appeal, Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/ Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2012. Redacted Transcript Deadline set for 8/6/2012. Release of Transcript Restriction set for 10/4/2012. (cjm)

07/02/2012 56 Notice of Filing of Official Transcript (cjm)

04/04/2014 57 MEMORANDUM of USCA as to 51 Notice of Appeal, filed by Richard Armstrong, Leslie Clement. AFFIRMED. (cjm)

04/29/2014 58 MANDATE of USCA as to 51 Notice of Appeal, filed by Richard Armstrong, Leslie Clement (cjm)

07/08/2014 59 Letter from Supreme Court of the United States to the United States Court of Appeal for the Ninth Circuit

re Appeal No. 12-35382. The petition for a writ of certiorari in the above entitled case was filed on July 2, 2014 and placed on the docket July 7, 2014 as No. 14-15.(st)

10/03/2014 60 Letter from Supreme Court of the United States, No. 14-15 (9CCA 12-35382). The petition for a writ of certiorari is granted limited to Question 1 presented by the petition. (cjm) (Entered: 10/06/2014)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EXCEPTIONAL CHILD CENTER, INC.; INCLUSION, INC.; TOMORROW'S HOPE SATELLITE SERVICES, INC.; WDB, INC.; LIVING INDEPENDENTLY FOR EVERYONE, INC., Plaintiffs-Appellees, v. RICHARD ARMSTRONG; LESLIE CLEMENT, Defendants-Appellants.	No. 12-35382 D.C. No. 1:09-cv-00634-BLW Relevant Docket Entries

Date Filed	No.	Docket Text
05/14/2012	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Fee due from Appellants Richard Armstrong and Leslie Clement on 05/11/2012. Mediation Questionnaire due on 05/21/2012. Transcript ordered by 06/11/2012. Transcript due 07/10/2012. Appellants Richard Armstrong and Leslie Clement opening brief due 08/20/2012. Appellees Exceptional Child Center, Inc, Inclusion, Inc, Living Independently for Everyone, Inc., Tomorrow's Hope

		Satellite Services, Inc. and WDB, Inc. answering brief due 09/18/2012. Appellant's optional reply brief is due 14 days after service of the answering brief. [8176779] (JI)
09/04/2012	10	Submitted (ECF) Opening brief for review. Submitted by Appellants Richard Armstrong and Leslie Clement. Date of service: 09/04/2012. [8309841] (CJW)
09/05/2012	11	Filed clerk order: The opening brief [10] submitted by Richard Armstrong and Leslie Clement is filed. Witnin 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8310125] (RH)
09/07/2012	12	Received 7 paper copies of Opening brief [10] filed by Richard Armstrong and Leslie Clement. [8314970] (SD)
09/07/2012	13	Filed Appellants Richard Armstrong and Leslie Clement excerpts of record in 2 volumes. No certificate of service. [8314994] (RH)

01/18/2013	19	Filed (ECF) Appellants Richard Armstrong and Leslie Clement citation of supplemental authorities. Date of service: 01/18/2013. [8480113] (CJW)
02/01/2013	20	Submitted (ECF) Answering Brief for review. Submitted by Appellees Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc. and exceptional Child Center, Inc.. Date of service: 02/01/2013. [8497335] – [COURT UPDATE: Attached corrected brief. Resent NDA. 02/04/2013 by RY] (JMP)
02/05/2013	21	Filed clerk order: The answering brief [20] submitted by Inclusion, Inc., Living Independently for Everyone, Inc., Tomorrow's Hope Satellite Services, Inc., WDB, Inc. and exceptional Child Center, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8499743] (RH)

02/07/2013	22	Received 7 paper copies of Answering brief [20] filed by Inclusion, Inc., et al. [8504745] (SD)
03/12/2013	25	Submitted (ECF) Reply Brief for review. Submitted by Appellants Richard Armstrong and Leslie Clement. Date of service: 03/12/2013. [8548012] (CJW)
03/12/2013	26	Filed clerk order: The reply brief [25] submitted by Richard Armstrong and Leslie Clement is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8548074] (RH)
03/15/2013	27	Received 7 paper copies of Reply brief [25] filed by Richard Armstrong and Leslie Clement. [8552572] (SD)
07/18/2013	28	Sent Notice requesting electronic excerpts in 14 days. [8710114] (SS)
07/19/2013	29	Submitted (ECF) excerpts of record. Submitted by Appellants Richard Armstrong and Leslie Clement. Date of service: 09/04/2012. [8710354] (CJW)
11/20/2013	39	Filed clerk order (Deputy Clerk: SM): The parties shall be prepared to

		discuss at oral argument whether a conflict exists between state and federal law, as is required to state a claim under the Supremacy Clause, where Plaintiffs-Appellees do not identify a specific state law or regulation that conflicts with 42 U.S.C. § 1396a(a)(30)(A). [8871023] (SM)
12/02/2013	40	ARGUED AND SUBMITTED TO RICHARD C. TALLMAN, CARLOS T. BEA and STEPHEN JOSEPH MURPHY, III. [8883999] (SB)
04/04/2014	41	FILED MEMORANDUM DISPOSITION (RICHARD C. TALLMAN, CARLOS T. BEA and STEPHEN JOSEPH MURPHY, III) AFFIRMED. FILED AND ENTERED JUDGMENT. [9044344] (MM)
04/29/2014	42	MANDATE ISSUED.(RCT, CTB and SJM) [9075766] (RL)
07/08/2014	43	Received notice from the Supreme Court: petition for certiorari filed on 07/02/2014. Supreme Court Number 14-15. [9159989] (RR)
10/03/2014	44	Received notice from the Supreme Court. Petition for certiorari GRANTED on 10/02/2014.The petition for a writ of certiorari is granted limited to Question 1 presented by the petition. Supreme Court Number 14-15. [9265795] (RR)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

INCLUSION, INC., EXCEPTIONAL CHILD CENTER, INC., LIVING INDEPENDENTLY FOR EVERYONE, INC., TOMORROW'S HOPE SATELLITE SERVICES, INC., WDB, INC.,	)	Case No. 09-CV-00634-BLW
Plaintiffs,	)	STIPULATION OF FACTS
v.	)	
RICHARD ARMSTRONG, and LESLIE CLEMENT, in their official capacities,	)	
Defendants.	)	

COME NOW Defendants Armstrong and Clement, by and through their attorneys of record, and the above-named Plaintiffs, by and through their attorney of record, and hereby stipulate and agree to the following facts:

I. The Parties

1. Plaintiffs are five Idaho corporations providing services to Medicaid eligible individuals in the state of Idaho.

2. Defendant Richard Armstrong is the Director of Idaho's Department of Health and Welfare (IDHW), Defendant Leslie Clement is an IDHW Deputy Director and former IDHW Division of Medicaid Administrator with responsibility for administering and operating Idaho's Medicaid Plan at all times relevant to this litigation.

II. Services Provided by Plaintiffs That are the Subject of this Lawsuit

I. Medicaid is a cooperative federal-state program that directs federal funding to participating states to "enable[e] [sic] each state, as far as practicable to furnish medical assistance on behalf of families with dependent children and of aged, blind and disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. §1396-1. Should a state choose to participate in the Medicaid program, it must comply with the requirements of the Medicaid Act. The State

of Idaho has chosen to participate in the Medicaid program.

2. Idaho's Medicaid-covered services are set out in the Medicaid state plan. The State of Idaho also covers certain Medicaid benefits pursuant to waivers approved by the Federal Center for Medicaid and Medicare Services ("CMS"). One such waiver is known as the Developmentally Disabled Home and Community Based Services Waiver ("DD Waiver").

3. Pursuant to the DD Waiver, individuals who qualify to receive medical assistance and rehabilitation services under the Idaho Medicaid state plan and who also meet institutional level of care requirements to receive care in an Intermediate Care Facility for People with Intellectual Disabilities ("ICF/ID") may choose to reside in either their own home and receive Supported Living services or in a Certified Family Home ("CFH"). *See* IDAPA 16.03.10.702.03.

4. Plaintiffs in this case are Residential Habilitation Agencies (RHA) providing Residential Habilitation in Supported Living settings.

5. Residential Habilitation consists of an integrated array of individually-tailored services and supports which are designed to assist eligible participants to reside successfully in the community. These services and supports are set forth in IDAPA 16.03.10.703 and include skills training and/or direct assistance in areas such as decision making, money management, daily living skills, socialization, mobility and behavior shaping or management. Residential

Habilitiation also includes personal assistance services to the participant in daily living activities, household tasks, and routine activities which the individual is unable to accomplish on his or her own, including grooming, bathing, eating, administering medications that are normally self-administered, communication, cleaning, laundry, meal preparation, shopping and the like. Residential Habilitation may also include skills training for participants, their family members and other caregivers.

III. Reimbursement Rates for Residential Habilitation Services/Supported Living

1. Each RHA wishing to offer services reimbursed by Medicaid must execute a Medicaid Provider Agreement. One of the terms of the Medicaid Provider Agreement is that the provider must accept Medicaid reimbursement as the total payment for covered services. Each of the Plaintiffs has executed one or more provider agreements.

2. From March 2001 through November 2002, supported living services provided under the DD Waiver were reimbursed at an hourly rate with an effective cap of $202.60 per day.

3. Effective September 1, 2003, at the request of RHAs providing supported living service and developmental disability agency services, such as developmental therapy, IDHW instituted a "wrap around" service and reimbursement rate. Under the wrap around service, providers could be reimbursed a daily

rate of $242.14 per day for all residential habilitation and supervisory services provided to residents in supported living.

4. Effective October 1, 2004, following onsite observation of participants and survey of RHAs, IDHW initiated acuity based levels of care, and changed reimbursement for wrap around services to $221.12 per day for residents requiring a "High Support" level, and $263.36 per day for residents requiring "Intense Support."

5. Effective July 1, 2006, the IDHW modified the wrap around service rates, changing "High Support" rate to $225.32 per day, and the "Intense Support" rate to $268.36. At the same time, rates for supported living services that were billed on an hourly basis were increased to $12.96 per hour for individual services, and $7.64 per hour for group services. These rates are still effective today.

IV. The IDHWs Studies of Costs for Supported Living Services

1. In 2005 the Idaho Legislature adopted Idaho Code Section 56-118 requiring the IDHW to implement reimbursement rate setting methodologies for various Medicaid services including residential habilitation agency services. As part of its efforts to comply with I.C. §56-118 the IDHW contracted with Johnson, Villegas-Grubb and Associates ("JVGA") to assist in establishing a methodology for reviewing and determining Medicaid reimbursement rates to

private businesses providing community-based services.

2. The first report from JVGA was submitted to the Idaho Legislature on November 30, 2006. JVGA's first report was the result of a survey of Medicaid providers to determine their costs of providing service. Utilizing what JVGA called the "Arizona Model," a proposed reimbursement rate for each service was calculated utilizing a direct service wage component, with additions calculated as a percentage of direct service wages for Employment Related Expenditures, Program Related Expenditures, and General and Administrative Expenses. The JVGA report recommended the following changes in reimbursement rates for residential habilitation services in a supported living environment:

Description	2006 Rate	JVGA Proposed Rate	% Change
Daily Rate – High Support	$225.32	$228.48	1.4%
Daily Rate – Intense Support	$268.36	$342.72	27.7%
Hourly Rate – Individual	$12.96	$18.72	44.3%
Hourly Rate – Group	$7.64	$7.48	-2.1%

3. The IDHW did not modify residential habilitiation [sic] reimbursement rates as proposed

by JVGA, but continued to conduct cost and time studies. The results of the IDHW's studies were reported to the Legislature each year.

4. In 2009, the IDHW compiled the results of its cost studies over the preceding years, made modifications to the "Arizona Model" as proposed by JVGA, and sought CMS approval of an amendment to the DD Waiver to change the method of setting reimbursement rates. The IDHW created a "Summary of Service Codes" based on the available studies which calculated proposed reimbursement rates for certain services based on wage rates, employment related expenditures, program support expenses, paid leave time and general and administrative expenses. The IDHW's 2009 calculation was part of its report to the legislature under I.C. §56-118. The following is a comparison of the 2006 Rates, the JVGA Proposed Rates and the IDHW's 2009 calculations:

Description	2006 Rate	JVG Proposed Rate	IDHW's Proposed 2009 Rate
Daily Rate – High Support	$225.32	$228.48	$248.40
Daily Rate – Intense Support	$268.36	$342.72	$496.56
Hourly Rate – Individual	$12.96	$18.72	$20.68
Hourly Rate – Group	$7.64	$7.48	$8.28

5. The IDHW has not implemented the rates set out in the 2009 calculation for the services at issue in this case.

6. Sheila Pugatch is the Principal Financial Specialist at IDHW. She manages the Office of Reimbursement Policy, which has primary responsibility for setting Medicaid reimbursement rates.

7. Ms. Pugatch directed the IDHW's efforts to conduct cost studies and to calculate proposed reimbursement rates, including the IDHW's 2009 rate proposals. In addition, Ms. Pugatch oversaw the efforts of JVGA to collect and analyze cost data. The result of the JVGA proposal on rates would have been a $4 million increase in state Medicaid expenditures. If the Legislature had appropriated additional funds, the IDHW intended to implement the JVGA proposed rates. The Legislature did not, however, appropriate funds for those increases.

8. The present rate, implemented in 2006, is not based on the cost studies performed between 2006 and 2009. The IDHW would implement the rates set out in the 2009 legislative report if the Idaho Legislature would appropriate the funds to pay them. In the absence of an appropriation, the IDHW has not implemented those rates.

V. Access to Supported Living Services

1. Services covered by the DD Waiver are readily available to eligible participants. There are no

waiting lists for any Medicaid services in Idaho. If a DD Waiver participant chooses to live in their own home and receive supported living services, the participant's service coordinator and care manager assist with providing the participant RHAs in the geographic area to choose from.

2. Currently there are 61 RHAs certified to provide supported living services in Idaho. The following table shows the number of RHAs providing supported living services in each of IDHW's seven regions throughout the state:

Region 1 = 5
Region 2 = 7
Region 3 = 9
Region 4 = 14
Region 5 = 7
Region 6 = 9
Region 7 = 10

3. There are 6,202 participants receiving supported living services. As of the end of calendar year 2010 Plaintiffs submitted claims for supported living services for the following number of participants:

Provider	# of Participants	% of Total
Inclusions Inc.	138	2.2%
Excepitonal Child Center, Inc.	10	.16%
Living Independently For Everyone, Inc.	36	.6%
WDB, Inc.	38	.61%
Total Plaintiffs	222	3.5%

4. The IDHW Critical Incident and Complaint Data Base, used to track all Medicaid benefits and services complaints, including complaints related to access to services, shows no unresolved complaints for supported living services.

5. Jim Whitaker, Operations Director for Plaintiff Inclusions, Inc., testified that Inclusions, Inc. had not ever turned away a prospective client because it could not afford to provide supported living services.

6. James Hutchings, Administrator and owner of Exceptional Child Center, Inc. testified that his agency could take on at least two more supported living clients. To his knowledge his agency had not ever turned away a supported living client.

DATED this 25th day of July, 2011.

HERZFELD & PIOTROWSKI

/s/
JAMES M. PIOTROWSKI
Attorney for Plaintiffs

DATED this 25th day of July, 2011.

OFFICE OF THE
ATTORNEY GENERAL

/s/ Peg M. Dougherty
Attorney for Defendants

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]